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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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01/29/2004

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/29/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,418

Applicant(s)

Nashua et al.

Examiner

Shian T Luong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-18,20-25 and 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2,4,9-10,12,15,16, 17,18,20-21,23,28-29,31 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilman (US 4,534,126). Gilman discloses a first and second end caps 12,13 frictionally engaging a transparent central portion 11. A merchandise card 14 carrying indicia extends between the two caps and secured in position in the central portion within the end caps. The protrusion is the side walls on the end caps. The area within the end cap is considered a groove or a depression.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the central portion out of thermoplastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claims 1-6,9-11,13-18,20-25,28-30, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madock (US 5,645,329) in view of Official Notice. Madock discloses a holder including a cap 12 and a cap 16. A central portion 13 is situated between the two caps. A card 14 also extends between the two caps. The central portion comprises protrusions to engage the opening in the end cap. Madock does not show indicia on element 14, but it is well known in the art to provide indicia on a card or container to illustrate the device or to provide additional information thereon. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the central portion out of transparent material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

It would have been obvious to modify the device so the protrusion is on the end caps to engage the opening in the central portion or the card, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

6. Claims 1-4,9,10,12,14,15,16,17,18,20-23,28-29,31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCunney (US 3,306,266) in view of Gilman (US 4,534,126). McCunney discloses a card holder comprising an end cap wherein the card is secured within the cap as shown in Figure 4. The cap engages a tube. McCunney does not show two caps, but Gilman discloses a first and second end caps 12,13 frictionally engaging a

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transparent central portion 11. A merchandise card 14 carrying indicia extends between the two caps and secured in position in the central portion within the end caps. The protrusion is the side walls on the end caps. The area within the end cap is considered a groove or a depression.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the central portion out of thermoplastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 11 and 30 rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 20, further in view of Official Notice. It would have been obvious to mold the end caps as it is conventionally done in the container arts.

Conclusion

8. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

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For applicant's convenience, the formal FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
January 23, 2004


Primary Examiner
Shian Luong
Art Unit 3728